

MOCK TEST PAPER
FINAL (NEW) COURSE : GROUP II
ELECTIVE PAPER 6C: INTERNATIONAL TAXATION

Attempt any two out of three case study based questions.

Each case study carries 50 Marks.

Time Allowed – 4 Hours

Maximum Marks – 100

CASE STUDY 1

Mr. Arjun Batra, a resident Indian, aged 58, has business interests in India and in some other foreign nations also. The Finance Manager has sent a mail, furnishing details of income earned in India and outside India during the P.Y. 2017-18.

Income earned in foreign nations

Arjun has derived income from two other nations E and F, with which India does not have DTAA.

The particulars of income earned in the two nations E and F are as under:

Particulars of Income	(Rs. in lakhs)	
	E	F
Gross rental receipts from commercial property	2	3
Share income from Partnership firm (loss)	-1	-1.5
Business income	2.2	3.3
STCG from sale of vacant site on 1.11.2017	15	Nil
Agricultural Income	1.2	1.8

Income earned in India

Particulars	(Rs. in lakhs)
Business income	1.5
Long-term capital gains on sale of residential house in Mumbai on 1.3.2018	45
Agricultural income from lands in Bengaluru	3.2

The Manager (Finance) has informed that following investments were made in India during the year ended 31-3-2018:

Particulars of Income	(Rs. In lakhs)
Purchase of residential house at Jaipur on 22-3-2018 in wife's name	37
Contribution to PPF	1.50

Income-tax rate structure:

Country E

(Rs.)	Tax rate
Upto Rs.3 lakhs	Nil
Rs.3 to Rs.6 lakhs	15%
Above Rs.6 lakhs	22%

Country F

Flat 27% without any basic exemption limit.

Tax treatment/ concessions in other nations

- (i) No statutory allowance/deduction in respect of house property income in Country E as well as Country F.
- (ii) Loss from firm can be set off against other business income in Country F only.
- (iii) Agricultural income is exempt in Country E only.

Mail from Taxation Manager of Country E on 30-4-2018

As per this mail, there is clear information that undisclosed income is earned in country E to the tune of Rs.5 lakhs relating to the previous year 2016-17 and about the existence of undisclosed gold jewellery purchased on 21-4-2016. Neither this income, nor the asset in question, has any bearing to income chargeable under the provisions of the Income-tax Act, 1961.

The jewellery had been purchased for Rs.4.2 lakhs. Its value as per report of Valuer recognized by the Government is Rs.5.2 lakhs as on 1-4-2018 and Rs.5.3 lakhs as on 30-4-2018.

I. MULTIPLE CHOICE QUESTIONS

Write the most appropriate option to each of the following questions by choosing one of the four options given. Each question carries two marks.

1. Any term used in a DTAA with a foreign country and not defined in the agreement or the Act but assigned a meaning in the notification issued by the Central Government in the Official Gazette, shall have the meaning assigned in such notification and shall be effective from the -
 - (a) Date of the DTAA
 - (b) Date of the notification
 - (c) Date of publication of the Official Gazette
 - (d) None of the above.
2. In case of conflict between the provisions of the DTAA and the Income-tax Act, 1961, then,
 - (a) The provisions of the Act will always prevail over the DTAA.
 - (b) The provisions of the DTAA will always prevail over the Act.
 - (c) The provisions of the Act will apply to the extent they are more beneficial to the assessee
 - (d) The issue will be resolved by mutual consent of the Contracting States
3. Where a person derives income from a nation with which India does not have a DTAA, such person is given credit in India in the following manner:
 - (a) Entire tax paid in the foreign country is allowed as deduction.
 - (b) Tax paid in the foreign country on income which is doubly taxed, is allowed as deduction.
 - (c) Tax paid on income which is doubly taxed, is allowed as deduction, at the Indian rate of tax only.
 - (d) Tax paid on income which is doubly taxed, is allowed as deduction, at the Indian rate of tax or rate of tax of the foreign country, whichever is lower.
4. Let us say Arjun has earned income from house property in Country X which is taxable under the domestic tax laws of Country X. Such income is also taxable in the hands of Arjun in India, since he is resident in India. Assume that the DTAA between India and Country X provides for taxation of such income in the source state only. In this situation,
 - (a) Such income is exempt in India by virtue of the DTAA between India and Country X
 - (b) Such income will be exempt in India, provided that Arjun obtains a Tax Residency Certificate from the Government of Country X.

- (c) Such income is taxable in India, since Arjun is resident in India.
- (d) Such income is taxable in India, since the Income-tax Act, 1961 does not provide for exemption of income from house property outside India.
5. Assume that Arjun has earned an income of Rs.4 lakhs by way of lump sum consideration for copyright of book from a publisher in Country Y, with which India does not have a DTAA. The same has been taxed at a flat rate of 5% in Country Y. In India, his gross total income is Rs.7 lakhs. The double taxation relief available is
- (a) Rs.20,000
- (b) Rs.5,000
- (c) Rs.12,000
- (d) Rs.1,932
6. Assume that Arjun had acquired a factory building in Country Z for Rs.24 lakhs on 21-3-2015, for which Rs.18 lakhs was invested from explained sources which had suffered tax in India. This asset comes to the knowledge of the Assessing Officer on 20-5-2017. The market value of the asset as on 1-4-2017 is Rs. 40 lakhs. The value of undisclosed foreign asset as per section 5 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act; 2015 (BM Act) is
- (a) Rs.40 lakhs
- (b) Rs.22 lakhs
- (c) Rs.10 lakhs
- (d) Rs.6 lakhs
7. Continuing the facts of MCQ 6., assume that the Assessing Officer has issued the notice under section 10(1) of the BM Act on 30-5-2018. The time limit for completion of assessment under the BM Act is
- (a) 31-3-2021
- (b) 30-5-2020
- (c) 31-3-2023
- (d) 30-5-2023
8. Taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied, are covered in the following Model Convention(s):
- (a) only in the OECD Model Convention
- (b) only in the UN Model Convention
- (c) only in the US Model Convention
- (d) Both (a) and (b)
9. In the tax treaties based on OECD and UN Model Tax Conventions, where capital gains arises on alienation of an immovable property, such gains derived -
- (a) Will always be taxed only in the place of residence of the taxpayer;
- (b) Will always be taxed only in the place of location of the immovable property;
- (c) Can be taxed in both States and appropriate relief allowed as per the terms of the DTAA in the place of residence;
- (d) None of the above.

10. A separate article on "Independent Personal Services" is present –
- (a) Only in the OECD Model Convention
 - (b) Only in the UN Model Convention
 - (c) Only in the US Model Convention
 - (d) Both in the OECD and UN Model Conventions

II. DESCRIPTIVE QUESTIONS

1. Ascertain the income-tax liability of Mr. Arjun Batra for the assessment year 2018-19. **(20 marks)**
2. In respect of the mail received from the Taxation Manager of Country E on 30-4-2018, are there any tax implications in the hands of Mr. Arjun in India? If so, in what year will the impugned items be taxed and what is the rate of tax? Compute the tax liability on account of such items. **(10 Marks)**

CASE STUDY 2

Mr. Rai is a citizen of Mauritius. His immediate family including his parents, born in undivided India, is residing in India. He also has friends in different parts of India, on account of which he occasionally visits India. On one of his trips to India he met his childhood friend, Mr. Bhandari. The one thing that Mr. Rai and Mr. Bhandari share in common, is their passion for promoting organic foods. During their conversations they realize that they could potentially set up a business venture to take their childhood friendship, a step further.

They both spend a year preparing a detailed business plan which they pitch to some investor friends. Their investor friends evince interest which prods them to formally incorporate a company, to commence their operations. The company is called RB Pvt. Ltd. which is incorporated in Mauritius on August 15, 2016.

They draw up the charter documents, that is, Articles of Association and Memorandum of Association. It is decided that Mr. Rai and Mr. Bhandari would be the sole shareholders of the company, holding equal stake in RB Pvt. Ltd. The Chief Executive Officer of the company is Mr. Rai.

Mr. Rai, Mr. Bhandari and Mr. Roy (one of their investor friends) form the board of directors of the company. Mr. Roy is based out of Kolkata, India. Mr. Bhandari lives in Gurgaon, India.

After the formal registration of the company, they set out to find a suitable office space for the company in the city of Port Louis, Mauritius. In November 2016, they find a small office space in a new business complex close to the city center of Port Louis, Mauritius and take it on lease hold basis for a year. They designate this office space as their registered office where the books of accounts will be kept and maintained.

By April 1, 2017, they employ an office manager cum receptionist Mr. Sundaram to take care of the office. Next, they employ two individuals (Mrs. Indra and Mr. Raghu) with over ten years of experience with leading retail brands in Mauritius. Mrs. Indra and Mr. Raghu are to start implementing the detailed business plan drawn up by Mr. Rai and Mr. Bhandari. For the financial year 2017-2018, the aggregate pay roll expenses for these three employees is Rs.15,00,000.

They arrange for a series of meetings with the board of directors to give their inputs and understand the plan of action. Upon the directions and approval of the board of directors, they commence their work of implementing the business plan.

The first steps that Mrs. Indra and Mr. Raghu are to take as per the business plan is to finalize any two organic foods grown in Mauritius that will be marketable in New Delhi, India. During the financial year 2017-2018 the team has been able to identify black rice and barley as suitable products for supply.

They then set out to find suitable suppliers from Mauritius from whom the foods can be sourced. They need to then liaise with some retail stores in New Delhi where the produce can be introduced and sold. Depending on the viability of the business model, it can be scaled further.

Indian retail chain store Modern Bazaar has expressed interest in introducing the products in their stores on a pilot basis. Mr. Bhandari employs Mr. Sharma in June 2017 to take care of paper work and act as his local secretary. Mr. Sharma was born in India and has lived in India throughout. For the months he works during the financial year 2017-2018, he is paid a salary of Rs.5,00,000.

During the financial year 2017-2018 the company has a total of four board meetings. Each of the meetings is attended by the three directors personally. The first, second and third meeting is held in Mauritius while the next meeting is held in New Delhi, India. Basically, there is a meeting in every quarter.

The first meeting takes up one important matter that is, the grant of a power of attorney to Mrs. Indra to enable the work in Mauritius to go on smoothly. Accordingly, it is decided that all matters of day-to-day importance can be approved by Mrs. Indra. If the matter involves expenditure of more than Rs.25,000, the approval of Mr. Rai would be mandatory.

The second meeting relates to finalizing the list of products to be launched by the company which takes place after much intense discussions. While Mr. Bhandari and Mr. Roy doubt the viability of black rice becoming popular in India, Mr. Rai has the final word on the matter.

The third meeting relates to potential investment to be put in by Mr. Roy, the third director-cum-investor. Mr. Roy proposes infusing funds of Rs.25,00,000 subject to receiving 20 percent stake in the company. This is agreed to, by Mr. Rai and Mr. Bhandari.

The fourth meeting takes up routine matters relating to the running of the company as well as the year-end appraisal of the company's performance as well as that of its employees.

After the books of accounts have been closed for the previous year 2017-2018, it is assessed that the company made a profit of Rs.15,00,000. The profit comprised the following:

- Income from product sales made to Modern Bazaar – Rs.11,00,000
- Income by way of dividends and interest earned – Rs.4,00,000

The company's assets in India amount to Rs.50,000 while its assets in Mauritius are in the tune of Rs.2,00,000.

RB Pvt. Ltd. follows the relevant procedure for assessment and files the tax returns in Mauritius. They believe that they are not resident in India.

When Mr. Sharma is discussing the matter with his lawyer friend he is informed RB Pvt. Ltd. would be considered resident in India. However, Mrs. Indra and Mr. Raghu believe that the company only has tax liability in Mauritius as the company is incorporated there.

Assume that Mauritius and India have a Double Taxation Avoidance Agreement which is identical to that of the provisions of the OECD Model Convention.

I. MULTIPLE CHOICE QUESTIONS

Write the most appropriate option to each of the following questions by choosing one of the four options given. Each question carries two marks.

1. During the P.Y. 2015-16 and P.Y. 2016-17, Mr. Rai was in India on business visits from June 15, 2015 to August 31, 2015 and July 1, 2016 to September 28, 2016, respectively. During the previous year 2017-18, Mr. Rai was in India during April – May 2017 and November 2017. What is the residential status of Mr. Rai for previous years 2016-2017 and 2017-2018, respectively?
 - (a) Non-resident and Resident and Ordinarily Resident, respectively
 - (b) Non-resident for both years
 - (c) Resident and Ordinarily Resident for both years
 - (d) Resident but Not Ordinarily Resident for both years

2. During the Previous Year 2017-18, Mr. Rai received Rs.75,00,000 on account of sale of agricultural land in Mauritius. The money was first received in Mauritius and then remitted to his Indian bank account. Is the sum taxable in India?
 - (a) No, as agricultural income is exempt u/s 10(1).
 - (b) No, as the income has accrued and arisen outside India and is also received outside India.
 - (c) Yes, since it is remitted to India in the same year.
 - (d) Yes, as agricultural income earned outside India is not exempted in India in the hands of a resident.

3. Mr. Bhandari only holds the shares in RB Pvt. Ltd. If he sells the shares held by him in RB Pvt. Ltd. for a gain during the Previous Year 2017-2018, which of the following statements is true?
 - (a) The resultant gain is a short-term capital gain taxable under the normal provisions of the Act.
 - (b) The resultant gain is a short-term capital gain taxable@15% u/s 111A.
 - (c) The resultant gain is a long-term capital gain taxable@20% u/s 112.
 - (d) The resultant gain is a long-term capital gain exempt u/s 10(38).

4. Mr. Bhandari receives dividend payment from RB Pvt. Ltd. in his Indian bank account during 2017-2018 to the tune of Rs.1,50,000. Which of the following statements is true?
 - (a) Mr. Bhandari is liable to pay tax on such dividend as it forms part of his total income
 - (b) RB Pvt. Ltd. will have to pay a dividend distribution tax u/s 115-O on such payments
 - (c) Mr. Bhandari is eligible for an exemption under section 10(34) in respect of such dividend.
 - (d) Both (b) and (c)

5. Which of the following factors is **not** considered under the OECD Model Convention to determine the residence of an individual?
 - (a) Habitual abode
 - (b) Centre of vital interests
 - (c) Own house in Calcutta given on rent for the last ten years
 - (d) Flat taken on rent in Pune where he is living for the last ten years.

6. If a company is resident of two Contracting States, namely, Country X, being the place of incorporation, and Country Y, being the place of effective management, then, the company would be resident of Country Y, being the place of effective management as per -
 - (a) Only the OECD Model Convention
 - (b) Only the UN Model Convention
 - (c) Only the US Model Convention
 - (d) Both (a) and (b)

7. If a company is resident of two Contracting States, namely, Country X, being the place of incorporation, and Country Y, being the place of effective management, then, the company shall not be treated as a resident of either Country X or Country Y for the purpose of benefits provided by -
 - (a) the OECD Model Convention only
 - (b) the UN Model Convention only
 - (c) the US Model Convention only
 - (d) Both (a) and (b)

8. As per the OECD Model Convention, the term “Permanent Establishment” would not include -
- a branch
 - an office for carrying out routine administrative work.
 - a factory for manufacture of goods
 - a warehouse for storage of goods
9. During the previous year 2018-19, RB Pvt. Ltd. entered into contracts for purchase and sale of barley grains with PB Pvt Ltd. PB Pvt. Ltd. is a company incorporated in New Delhi. On account of which of the following facts, would the companies be considered to be associated enterprises?
- One of the four directors of PB Pvt. Ltd. is Mr. Bhandari
 - RB Pvt. Ltd. owns 20% of shares in PB Pvt. Ltd.
 - RB Pvt. Ltd. extended a loan of Rs.20 lakhs to PB Pvt. Ltd. when the book value of the latter is Rs.42 lakhs
 - Mr. Bhandari owns 26% of shares in PB Pvt. Ltd.
10. In addition to the answer in question 9 above, what else needs to be proved for invoking a transfer pricing scrutiny as an international transaction?
- The transactions between the two companies are held on terms and prices which reflect market control
 - The transactions are covered by the notified safe harbor rules
 - RB Pvt. Ltd. is a non-resident company
 - The aggregate value of the transactions is Rs.50,00,000 in the concerned Previous Year

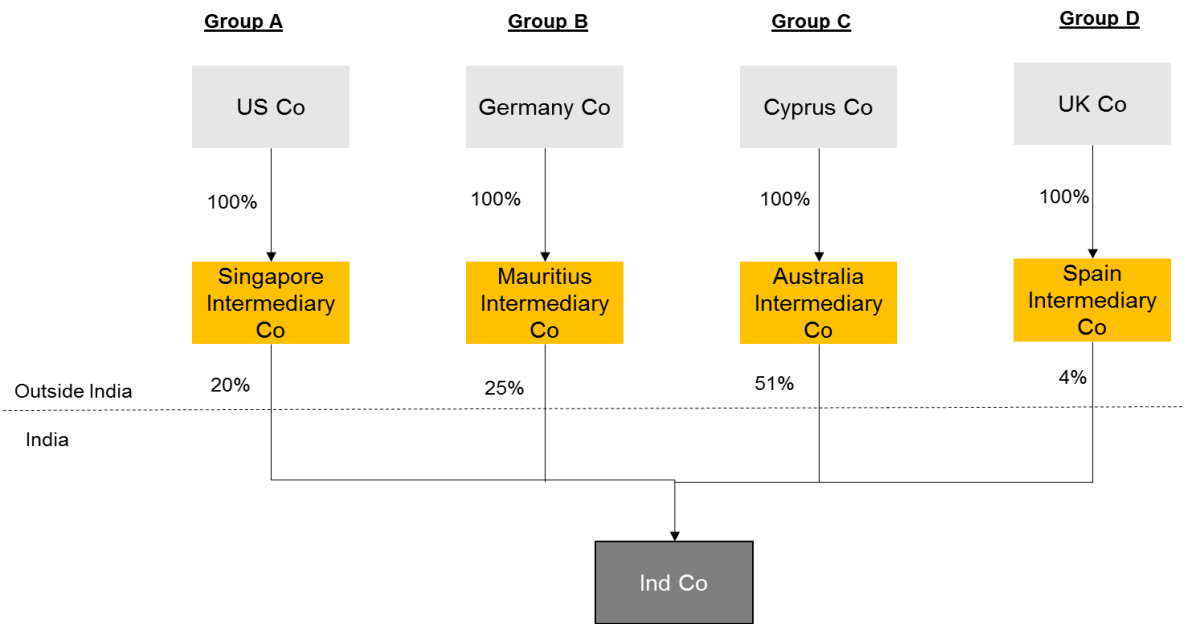
II. DESCRIPTIVE QUESTIONS

1. The board decides to understand the matter at hand from a tax lawyer. Accordingly, Mr. Bhandari seeks a meeting with a tax lawyer on the question. The lawyer explains the following in an informal conversation:
- RB Pvt. Ltd. would be considered to be a resident of India for tax purposes despite it having been incorporated in Port Louis, Mauritius. The reasons for the same are detailed as follows:
- Majority of the board of directors reside in India
 - The place of incorporation of the company is irrelevant
 - All the revenue generation activity is linked to India
- In your opinion, can the Indian tax authorities argue that RB Pvt. Ltd. is resident in India for tax purposes, despite the fact that the company has been incorporated in Mauritius? Would their reasoning be the same as cited by the tax lawyer? **(10 Marks)**
2. Assume that Mr. Bhandari has opened an office of RB Pvt. Ltd. in Pune from where he and Mr. Sharma execute the work of the company relating to Indian operations. RB Pvt. Ltd. is further considering advertising the product on internet using Facebook. RB Pvt. Ltd. enters into talks with Facebook for hosting the desired advertisements. It negotiated a sum of INR 10 lakhs, which is paid to Facebook for online advertisement services in March, 2017. Assume that Facebook does not have a permanent establishment in India.
- Is the fee paid for online advertisement services by RB Pvt. Ltd. to Facebook Inc. taxable in India? Discuss. **(4 Marks)**
 - If the answer to (a) is in the affirmative, is there any requirement to deduct tax at source? If tax is not so deducted, what would be the consequence? **(4 Marks)**

- (c) What is the provision incorporated in the Indian tax laws to avoid double taxation of such income? **(2 Marks)**
3. (a) RB Pvt. Ltd. wants a binding advice relating to their tax liability in India. They have been informed by Modern Foods that while making the payments relating to the product sales, taxes have to be withheld. Is there an avenue available under domestic law for obtaining such binding advice? **(4 Marks)**
- (b) Should RB Pvt. Ltd. make such application or Modern Bazaar? The total value of the transactions between RB Pvt. Ltd. and Modern Bazaar is Rs.50,00,000 in the previous year 2017-2018. **(3 Marks)**
- (c) Are there grounds on which the request may be denied? **(3 Marks)**

CASE STUDY 3

Ind Co is an unlisted, private limited, Indian company incorporated under the Companies Act, 1956 and is engaged in the business of the manufacturing of automobile components. Ind Co is held by 4 groups of shareholders (Groups A, B, C and D) in different proportions. Groups A, B, C and D are headquartered in US, Germany, Cyprus and UK respectively. However, these headquarter companies do not hold shares of Ind Co directly, but hold the shares through intermediary companies in Singapore, Mauritius, Australia, Spain respectively, as depicted in the shareholding pattern below:



The date of acquisition of shares by each of the Groups is given below:

Date of acquisition			
Group A	Group B	Group C	Group D
Date of acquisition by US Co in Singapore Intermediary Co - 1 April 2012	Date of acquisition by Germany Co in Mauritius Intermediary Co - 1 April 2012	Date of acquisition by Cyprus Co in Australia Intermediary Co - 1 April 2012	Date of acquisition by UK Co in Spain Intermediary Co - 1 April 2012
Date of acquisition by Singapore Intermediary Co in Ind Co - 1 March 2017	Date of acquisition by Mauritius Intermediary Co in Ind Co - 1 April 2012	Date of acquisition by Australia Intermediary Co in Ind Co - 1 April 2012	Date of acquisition by Spain Intermediary Co in Ind Co - 1 April 2012

Each of the Groups are now proposing to restructure their shareholding in Ind Co. Alternatively, they are also considering the proposal of exiting from Ind Co by transferring their stake to a buyer to be identified. The restructuring/ exit is proposed to be undertaken on 31 May 2018 by each of the Groups.

The last accounting year end (for the purpose of complying with the tax laws of the territory) for each of the entities and their respective book values as on such date are provided below:

Group A	Group B	Group C	Group D
US Co – 31 December 2017 Book value – INR 500 crores	Germany Co – 31 March 2018 Book value – INR 200 crores	Cyprus Co – 31 March 2018 Book value – INR 100 crores	UK Co - 31 March 2018 Book value – INR 100 crores
Singapore Intermediary Co – 30 June 2017 Book value – INR 25 crores	Mauritius Intermediary – 31 December 2017 Book value – INR 25 crores	Australia Intermediary Co – 31 December 2017 Book value – INR 100 crores	Spain Intermediary Co - 31 March 2018 Book value – INR 7 crores

Ind Co follows 1 April - 31 March as the Financial Year and the book value of Ind Co as on 31 March 2018 was INR 100 crores.

The book values (after reduction of liabilities), fair market values (after reduction of liabilities) and liabilities of some of the entities as on 31 May 2018 (ie date of transfer) is as below:

Particulars	Book value (INR crores)	Fair market value (INR crores)	Liabilities (INR crores)
Group A			
US Co	550	1000	100
Singapore Intermediary Co	30	50	0
Group B			
Germany Co	200	500	50
Mauritius Intermediary Co	30	60	0
Group C			
Cyprus Co	100	400	0
Australia Intermediary Co	120	300	0
Group D			
UK Co	120	150	50
Spain Intermediary Co	7	12	0
Ind Co	110	180	20

Groups A, B, C and D hold no other shares or assets in India other than investment in shares of Ind Co.

Note: Assume the fair market value and liability of all the companies as on 31.3.2018 is same as it is on 31.05.2018

I. MULTIPLE CHOICE QUESTIONS

Write the most appropriate option to each of the following questions by choosing one of the four options given. Each question carries two marks.

1. The provisions relating to taxation of indirect transfer of shares of an Indian company were introduced vide Finance Act, 2012, as a consequence of which of the following decisions of the Supreme Court -
 - (a) McDowell & Co. Ltd. v. CTO
 - (b) Vodafone International Holdings B.V. vs. UOI
 - (c) Union Of India vs Azadi Bachao Andolan
 - (d) CIT Vs Yokogawa India Limited
2. Based on the facts in the case, where US Co proposes to transfer shares of Singapore Intermediary Co, which of the following Double Taxation Avoidance Agreements ('DTAA'), would be applicable for analysing the taxability in the hands of US Co in India -
 - (a) US-Singapore DTAA
 - (b) India- Singapore DTAA
 - (c) India-US DTAA
 - (d) None of the DTAA's are applicable
3. With respect to transfer of shares of Singapore Intermediary Co by US Co, which of the following would be the 'specified date' for the purpose of determining whether such shares derive its value substantially from assets located in India:
 - (a) 30th June 2017
 - (b) 31st December 2017
 - (c) 31st March 2018
 - (d) 31st May 2018
4. Assuming the transfer of shares of Singapore Intermediary Co by US Co is taxable in India and ignoring DTAA provisions, if any, what would be the rate of tax on the gains arising from such transfer:
 - (a) 10%
 - (b) 20%
 - (c) 30%
 - (d) 40%

(Note – The above tax rates are excluding cess and surcharge, if any)
5. With respect to transfer of shares of Mauritius Intermediary Co by Germany Co, what would be the value of 'assets located in India' –
 - (a) INR 27.5 crores
 - (b) INR 32.5 crores
 - (c) INR 45 crores
 - (d) INR 50 crores
6. Which of the following incomes is not deemed to accrue or arise in India under section 9(1)(i) of the Income-tax Act, 1961?
 - (a) Income from any business connection in India
 - (b) Income through or from any property in India

- (c) Income arising from transfer of a capital asset situate in India
 - (d) Income relating to operations which are confined to purchase of goods in India for the purpose of export
7. Ind Co is required to report details with respect to transfer of shares of Singapore Intermediary Co by US Co in which of the following forms-
 - (a) Form 3CEA
 - (b) Form 3CT
 - (c) Form 49D
 - (d) There is no reporting requirement on Ind Co and reporting requirement applies only on Singapore Intermediary Co
 8. What is the timeline within which Ind Co is required to furnish information pertaining to transfer of shares of Mauritius Intermediary Co by Germany Co if the transaction has the effect of directly or indirectly transferring rights and management of Ind Co -
 - (a) Within the due date for filing return of income for the year in which the transfer has taken place
 - (b) Within 90 days from the date of the transaction
 - (c) Within 90 days from the end of the Financial Year in which such transfer has taken place
 - (d) There is no requirement on Ind Co to furnish information
 9. What are the penal consequences on Ind Co if it fails to furnish information pertaining to transfer of shares of Mauritius Intermediary Co by Cyprus Co if the transaction has the effect of directly or indirectly transferring rights and management of Ind Co -
 - (a) INR 100,000
 - (b) INR 500,000
 - (c) 2% of the value of the transaction in respect of which there is a failure to report
 - (d) There is no requirement on Ind Co to furnish information
 10. The fair market value of an unlisted share, held directly or indirectly by a company or an entity registered or incorporated outside India, for the purposes of clause (i) of sub-section (1) of section 9, shall be computed in accordance with which of the following methods -
 - (a) Net asset value, as certified by a Chartered Accountant
 - (b) Discounted Cash Flow method, as certified by a Chartered Accountant, as increased by liabilities, if any, considered in such valuation
 - (c) Any internationally accepted valuation methodology for valuation of shares on arm's length basis, as determined by a merchant banker or a Chartered Accountant, as increased by liabilities, if any, considered in such valuation
 - (d) Fair market value of all assets of the company computed on an arm's length basis, as certified by a Chartered Accountant

II. DESCRIPTIVE QUESTIONS

1. Examine the tax consequences of the following transactions under section 9(1)(i) of the Income-tax Act, 1961 and the applicable Double Taxation Avoidance Agreements -
 - (a) Transfer of shares of Singapore Intermediary Co by US Co to an unrelated Buyer **(4 Marks)**
 - (b) Transfer of shares of Mauritius Intermediary Co by Germany Co to an unrelated Buyer **(4 Marks)**
 - (c) Transfer of shares of Australia Intermediary Co by Cyprus Co to an unrelated Buyer **(3 Marks)**
 - (d) Transfer of shares of Spain Intermediary Co by UK Co to an unrelated Buyer **(4 Marks)**

2. (i) Compute the capital gains chargeable to tax in India in the hands of US Co from transfer of shares of Singapore Intermediary Co to an unrelated Buyer for INR 50 crores and the tax applicable on such capital gains. Also comment on whether the capital gains would be long-term capital gains or short-term capital gains.
US Co had acquire shares of Singapore Intermediary Co for INR 10 crores. **(5 Marks)**
- (ii) As an alternative, Group A is also evaluating the option of transferring shares held by Singapore Intermediary Co in Ind Co to an unrelated Buyer for a consideration of INR 45 crores. Singapore Intermediary Co had acquire shares of Ind Co for INR 5 crores. Evaluate the capital gains chargeable to tax in India considering the provisions of the Income-tax Act, 1961 and the applicable DTAA. **(4 Marks)**
- (iii) As an alternative to the (i) and (ii) above, if proposal of corporate restructuring is considered instead of exit proposal, Group A is evaluating the option of amalgamating US Co with another group company in US (US Co 2) as a result of which shares of Singapore Intermediary Co would be transferred to US Co 2. What are the conditions under the Income-tax Act, 1961 under which such transfer of shares of Singapore Intermediary Co to US Co 2 be exempt from capital gains tax in India? If the US Co has more than one undertaking, what is other option, if any, available with US Co to transfer shares of Singapore Intermediary Co by way of corporate restructuring without attracting income-tax in India under the Income-tax Act, 1961? **(6 Marks)**

EXHIBIT I

EXTRACTS OF ARTICLE ON CAPITAL GAINS FROM DOUBLE TAXATION AVOIDANCE AGREEMENTS

US-Singapore DTAA

No DTAA

India-US DTAA

“ARTICLE 13 - GAINS

Except as provided in Article 8 (Shipping and Air Transport) of this Convention, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.”

India- Singapore DTAA

“ARTICLE 13 – CAPITAL GAINS

1. *Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.*
2. *Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.*
3. *Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.*
- 4A. *Gains from the alienation of shares acquired before 1 April 2017 in a company which is a resident of a Contracting State shall be taxable only in the Contracting State in which the alienator is a resident.*
- 4B. *Gains from the alienation of shares acquired on or after 1 April 2017 in a company which is a resident of a Contracting State may be taxed in that State.*
- 4C. *However, the gains referred to in paragraph 4B of this Article which arise during the period beginning on 1 April 2017 and ending on 31 March 2019 may be taxed in the State of which the company whose*

shares are being alienated is a resident at a tax rate that shall not exceed 50% of the tax rate applicable on such gains in that State.

5. *Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4A and 4B of this Article shall be taxable only in the Contracting State of which the alienator is a resident.”*

Germany-Mauritius DTAA

“ARTICLE 13 – CAPITAL GAINS

1. *Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.*
2. *Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.*
3. *Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.*
4. *Gains derived by a resident of a Contracting State from the alienation of shares, participation, or other rights in the capital of a company or an interest in a partnership which is a resident of the other Contracting State may be taxed in that other Contracting State.*
5. *Gains from the alienation of any property other than that referred to in paragraphs 1 to 4, shall be taxable only in the Contracting State of which the alienator is a resident.*
6. *Where an individual who was a resident of a Contracting State for a period of 5 years or more has become a resident of the other Contracting State, paragraph 5 shall not prevent the first-mentioned State from taxing under its domestic law the capital appreciation of shares in a company resident in the first-mentioned State for the period of residency of that individual in the first-mentioned State. In such case, the appreciation of capital taxed in the first-mentioned State shall not be included in the determination of the subsequent appreciation of capital by the other State.”*

India-Germany DTAA

“ARTICLE 13 – CAPITAL GAINS

1. *Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.*
2. *Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.*
3. *Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.*
4. *Gains from the alienation of shares in a company which is a resident of a Contracting State may be taxed in that State.*
5. *Gains from the alienation of any property other than that referred to in paragraphs 1 to 4 shall be taxable only in the Contracting State of which the alienator is a resident.”*

India-Mauritius DTAA

“ARTICLE 13 – CAPITAL GAINS

1. *Gains from the alienation of immovable property, as defined in paragraph (2) of article 6, may be taxed in the Contracting State in which such property is situated.*
2. *Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other State.*
3. *Notwithstanding the provisions of paragraph (2) of this article, gains from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.*
- 3A. *Gains from the alienation of shares acquired on or after 1st April 2017 in a company which is resident of a Contracting State may be taxed in that State.*
- 3B. *However, the tax rate on the gains referred to in paragraph 3A of this Article and arising during the period beginning on 1st April, 2017 and ending on 31st March, 2019 shall not exceed 50% of the tax rate applicable on such gains in the State of residence of the company whose shares are being alienated;*
4. *Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 3A shall be taxable only in the Contracting State of which the alienator is a resident.*

Cyprus-Australia DTAA

No DTAA

India-Cyprus DTAA

“ARTICLE 13 – CAPITAL GAINS

1. *Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.*
2. *Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.*
3. *Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.*
4. *Gains from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in a Contracting State may be taxed in that State.*
5. *Gains from the alienation of shares other than those mentioned in paragraph 4 in a company which is a resident of a Contracting State may be taxed in that State.*
6. *Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5, shall be taxable only in the Contracting State of which the alienator is a resident.”*

India-Australia DTAA

“Article 13 – Alienation of Property

1. *Income or gains derived by a resident of one of the Contracting States from the alienation of real property referred to in Article 6 and, as provided in that Article, situated in the other Contracting State may be taxed in that other State.*
2. *Income or gains derived from the alienation of property, other than real property referred to in Article 6, that forms part of the business property of a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State or pertains to a fixed base available to a resident of the first-mentioned State in that other State for the purpose of performing independent personal services, including income or gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.*
3. *Income or gains derived from the alienation of ships or aircraft operated in international traffic, or of property other than real property referred to in Article 6 pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise which operated those ships or aircraft is a resident.*
4. *Income or gains derived from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally of real property referred to in Article 6 and, as provided in that Article, situated in one of the Contracting States, may be taxed in that State.*
5. *Income or gains derived from the alienation of shares or comparable interests in a company, other than those referred to in paragraph (4), may be taxed in the Contracting State of which the company is a resident.*
6. *Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of gains of a capital nature derived from the alienation of property other than that to which any of paragraphs (1), (2), (3), (4) and (5) apply.”*

UK-Spain DTAA

“Article 13 – Capital Gains

1. *Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.*
2. *Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) may be taxed in that other Contracting State.*
3. *Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic by an enterprise of that State or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.*
4. *Gains derived by a resident of a Contracting State from the alienation of shares, other than shares in which there is substantial and regular trading on a Stock Exchange, or comparable interests, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.*
5. *Gains from the alienation of shares or other rights, which directly or indirectly entitle the owner of such shares or rights to the enjoyment of immovable property situated in a Contracting State, may be taxed in that State.*
6. *Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.”*

India-UK DTAA

“Article 14- Capital Gains

1. *Except as provided in Article 8 (Air Transport) and 9 (Shipping) of this Convention, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.”*

India-Spain DTAA

“Article 14 – Capital Gains

1. *Gains derived by a resident of a Contracting State from the alienation of immovable property, referred to in Article 6, and situated in the other Contracting State may be taxed in that other State.*
2. *Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State.*
3. *Gains from the alienation of ships or aircraft operated in international traffic or of movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.*
4. *Gains from the alienation of shares of the capital stock of a company the property of which consists, directly or indirectly, principally of immovable property situated in a Contracting State may be taxed in that State.*
5. *Gains for the alienation of shares of the capital stock of a company forming part of a participation of at least 10 per cent in a company which is a resident of a Contracting State may be taxed in that Contracting State.*
6. *Gains from the alienation of any property other than that mentioned in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is a resident.”*

EXHIBIT II

RULE 11UC - DETERMINATION OF INCOME ATTRIBUTABLE TO ASSETS IN INDIA

- (1) The income from transfer outside India of a share of, or interest in, a company or an entity referred to in clause (i) of sub-section (1) of section 9, attributable to assets located in India, shall be determined in accordance with the following formula, namely:—

$$A \times \frac{B}{C}$$

Where;

A = Income from the transfer of share of, or interest in, the company or the entity computed in accordance with the provisions of the Act, as if, such share or interest is located in India;

B = Fair Market Value of assets located in India as on the specified date, from which the share or interest referred to in A derives its value substantially, computed in accordance with rule 11UB;

C = Fair Market Value of all the assets of the company or the entity as on the specified date, computed in accordance with rule 11UB:

Provided that if the transferor of the share of, or interest in, the company or the entity fails to provide the information required for the application of the aforesaid formula then the income from the transfer of such share or interest attributable to the assets located in India shall be determined in such manner as the Assessing Officer may deem suitable.

- (2) The transferor of the share of, or interest in, a company or an entity that derives its value substantially from assets located in India, shall obtain and furnish along with the return of income a report in Form No.3CT duly signed and verified by an accountant providing the basis of the apportionment in accordance with the formula and certifying that the income attributable to assets located in India has been correctly computed.]

EXHIBIT III

RULE 114DB - INFORMATION OR DOCUMENTS TO BE FURNISHED UNDER SECTION 285A

- (1) Every Indian concern referred to in section 285A shall, for the purposes of the said section, maintain and furnish the information and documents in accordance with this rule.
- (2) The information shall be furnished in Form No.49D electronically under digital signature to the Assessing Officer having jurisdiction over the Indian concern within a period of ninety days from the end of the financial year in which any transfer of the share of, or interest in, a company or entity incorporated outside India (hereafter referred to as "foreign company or entity") referred to in Explanation 5 to clause (i) of sub-section (1) of section 9 has taken place:

Provided that where the transaction in respect of the share or the interest has the effect of directly or indirectly transferring the rights of management or control in relation to the Indian concern, the information shall be furnished in the said Form within ninety days of the transaction.

- (3) The Indian concern shall maintain the following along with its english translation, if the documents originally prepared are in foreign languages and produce the same when called upon to do so by any income-tax authority in the course of any proceeding to substantiate the information furnished under sub-rule (2), namely:—
- (i) details of the immediate holding company or entity, intermediate holding company or companies or entity or entities and ultimate holding company or entity of the Indian concern;
 - (ii) details of other entities in India of the group of which the Indian concern is a constituent;
 - (iii) the holding structure of the shares of, or the interest in, the foreign company or entity before and after the transfer;
 - (iv) any transfer contract or agreement entered into in respect of the share of, or interest in, any foreign company or entity that holds any asset in India through, or in, the Indian concern;
 - (v) financial and accounting statements of the foreign company or entity which directly or indirectly holds the assets in India through, or in, the Indian concern for two years prior to the date of transfer of the share or interest;
 - (vi) information relating to the decision or implementation process of the overall arrangement of the transfer;
 - (vii) information in respect of the foreign company or entity and its subsidiaries, relating to,—
 - (a) the business operation;
 - (b) personnel;
 - (c) finance and properties;
 - (d) internal and external audit or the valuation report, if any, forming basis of the consideration in respect of shares, or the interest;
 - (viii) the asset valuation report and other supporting evidence to determine the place of location of the share or interest being transferred;
 - (ix) the details of payment of tax outside India, which relates to the transfer of the share or interest;

- (x) the valuation report in respect of Indian asset and total assets duly certified by a merchant banker or accountant with supporting evidence;
 - (xi) documents which are issued in connection with the transactions under the accounting practice followed.
- (4) Where there are more than one Indian concerns that are constituent entities of a group, the information may be furnished by any one Indian concern, if,—
- (i) the group has designated such Indian concern to furnish information on behalf of all other Indian concerns that are constituent of the group, and
 - (ii) the information regarding the designated Indian concern has been conveyed in writing on behalf of the group to the Assessing Officer:
- Provided** that nothing contained in this sub-rule shall have effect if the designated Indian concern fails to furnish the information in accordance with the provisions of this rule.
- (5) The Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems), as the case may be, shall specify the procedure for electronically filing of Form No.49D and shall also be responsible for evolving and implementing appropriate security, archival and retrieval policies in relation to the information so furnished under this rule.
- (6) The information and documents specified in sub-rule (3) shall be kept and maintained for a period of eight years from the end of relevant assessment year.

Explanation : For the purposes of this rule,—

- (i) "constituent entity" shall have the meaning as assigned to it in clause (d) of sub-section (9) of section 286;
- (ii) "group" shall have the meaning as assigned to it in clause (e) of sub-section (9) of section 286;
- (iii) "intermediate holding company or entity" means a company or an entity that has controlling interest in another company or entity and is itself controlled by, or is subsidiary of, another company or entity;
- (iv) "immediate holding company or entity" means the company or the entity that directly maintains the controlling interest in the Indian concern;
- (v) "ultimate holding company or entity" means a company or an entity that has ultimate control of the Indian concern directly or indirectly and such company or entity is not itself controlled by, or is subsidiary of, any other company or entity.]

EXHIBIT IV

EXTRACTS OF RULE 11UB – FAIR MARKET VALUE OF ASSETS IN CERTAIN CASES

- (1) The fair market value of asset, tangible or intangible, as on the specified date, held directly or indirectly by a company or an entity registered or incorporated outside India (hereafter referred to as "foreign company or entity"), for the purposes of clause (i) of sub-section (1) of section 9, shall be computed in accordance with the provisions of this rule.
- (2) Where the asset is a share of an Indian company listed on a recognised stock exchange on the specified date, the fair market value of the share shall be the observable price of such share on the stock exchange:

Provided that where the share is held as part of the shareholding which confers, directly or indirectly, any right of management or control in relation to the aforesaid company, the fair market value of the share shall be determined in accordance with the following formula, namely:—

$$\text{Fair market value} = (A+B)/C$$

Where;

A = the market capitalisation of the company on the basis of observable price of its shares quoted on the recognised stock exchange;

B = the book value of liabilities of the company as on the specified date;

C = the total number of outstanding shares :

Provided further that where, on the specified date, the share is listed on more than one recognised stock exchange, the observable price of the share shall be computed with reference to the recognised stock exchange which records the highest volume of trading in the share during the period considered for determining the price.

- (3) Where the asset is a share of an Indian company not listed on a recognised stock exchange on the specified date, the fair market value of the share shall be its fair market value on such date as determined by a merchant banker or an accountant in accordance with any internationally accepted valuation methodology for valuation of shares on arm's length basis as increased by the liability, if any, considered in such determination.